



D2

U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-02-086-53021 Office: Vermont Service Center

Date:

JAN 24 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

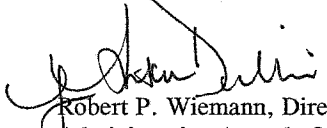
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a country club and golf course with 125 employees and a stated gross annual income in excess of \$4 million. It seeks to employ the beneficiary as a sales and promotions manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a statement.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director concluded that the petitioner had failed to demonstrate that the proffered position could be successfully performed only by an individual who possessed a baccalaureate or higher degree in a specific specialty. On appeal, counsel argues that the proffered position is a specialty occupation because it requires at least a bachelor's degree in marketing, management, or a related field. Counsel asserts that the education requirements for sales and promotion managers listed in the Department of Labor's (DOL) Occupational Outlook Handbook, (Handbook), support the arguments put forth on appeal.

The Service does not rely solely on the title of a position in determining whether that position qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the duties of the offered position were described as follows:

Plans and administer sales policies and programs to foster and promote patronage. Consults newspapers, trade journals, and other publications to learn about contemplated conventions and social functions. Organizes prospect files by listing information such as names of officials and plans for conventions, to be used for promotional purposes. Directs workers engaged in

preparing promotional correspondence with travel bureaus, business and social groups. Confers with department heads to discuss and formulate plans for soliciting business. Contacts executives of organizations to explain service and facilities offered by hotel and solicit their business. Supervises and trains service representatives. Plans and prepares advertising and promotional material and arranges for newspaper and other publicity.

To qualify the offered position as a specialty occupation, the petitioner must establish that:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. 214.2(h)(4)(iii)(A).

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

Counsel's argument that the proffered position is a specialty occupation because it requires at least a bachelor's degree in marketing, management, or a related field is not persuasive. The proffered position appears to combine the duties of a promotions manager with those of a sales manager and an advertising manager. A review of the DOL's Handbook, 2002-2003 edition, at page 28, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a promotions manager, sales manager, or an advertising manager. Rather, most employers prefer a wide range of educational backgrounds or promote individuals from within companies. While some employers may prefer degrees in business administration with emphasis in marketing, most employers prefer individuals with experience in related occupations plus a broad liberal arts background with a bachelor's degree in areas as diverse as sociology, psychology, literature, journalism, and philosophy being amongst the acceptable areas of study.

Additionally, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

While the record contains the resumes of four individuals who claim to possess at least a bachelor's degree and have been or are currently employed in management positions by the petitioner, the record does not contain any documentation to corroborate that such individuals possess the degrees listed. Consequently, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position.

Counsel argues that the degree requirement is common to the industry in parallel positions among similar organizations. In an attempt to provide evidence of an industry standard, counsel submitted twelve advertisements from the Monster.Com internet site for managerial positions being offered by various businesses. However, one of the advertisements reflects that the particular management positions being offered therein require only experience with no mention of any formal educational requirement. Six of the remaining advertisements require only a bachelor's degree without specifying a specific field of study, while two others indicate that a bachelor's degree or its equivalent in experience is needed. Only three of the advertisements list a requirement for a bachelor's degree in business, marketing, sales, or a related field. Three advertisements cannot be accepted as sufficient evidence of an industry standard, especially in light of the fact that the other nine advertisements did not list a degree requirement in a specific specialty. Therefore, it cannot be concluded that the evidence demonstrates that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals with bachelor's degrees in a specific specialty in parallel positions.

The petitioner has failed to submit any evidence to establish that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.